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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह प्रत्येक संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed as a separate compilation.

MINISTRY OF LABOUR, EMPLOYMENT & REHABILITATION

(Department of Labour & Employment)

NOTIFICATION

New Delhi, the 17th January 1967

S.O. 290.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, Jabalpur, in the industrial dispute between the employers in relation to the Associated Cement Companies Limited, Nowrozabad and Kotma Collieries, Post Office Nowrozabad and Kotma respectively, District Shahdol, Madhya Pradesh and their workmen, which was received by the Central Government on the 29th December, 1966.

BEFORE THE INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT (CENTRAL)
AT JABALPUR

Dated Jabalpur, December 23, 1966

PRESENT:

Sri G. C. Agarwala.—Presiding Officer.

ADJUDICATION CASE No. 10 OF 1966 (BOMBAY)

ADJUDICATION CASE No. 18 OF 1966 (JABALPUR)

In the Matter of an Industrial Dispute in Relation to Associated Cement Companies Limited, Nowrozabad and Kotma Collieries, P.O. Nowrozabad and Kotma respectively, District Shahdol, Madhya Pradesh and their Workmen

APPEARANCES:

For employers.—Shri I. M. Nanawati and Sri G. L. Govil, Authorised Representative.

For workmen.—Shri K. B. Chougale, General Secretary of the Union

INDUSTRY: Cement.

DISTRICT: Shahdol

AWARD

By Notification No. 5/3/66-LRII, dated 19th March, 1966 Ministry of Labour, Employment and Rehabilitation referred the following matter stated in the Schedule to the order of reference to the Central Government Industrial Tribunal, Bombay.

SCHEDULE

Whether the workers of the Kotma and Nowrozabad Collieries of the Associated Cement Companies Limited are entitled to profit sharing bonus for the years 1959-60, 1960-61, 1961-62, 1962-63 and 1963-64; if so, the quantum of such bonus?

The proceedings remained pending before the said Tribunal from 28th March, 1966, till 24th September, 1966, whereafter it was transferred to this Tribunal by Notification No. 8/141/66 LRII dated 17th September, 1966.

Both parties filed their written statements before the Bombay Tribunal. The employers, Associated Cement Companies Ltd., to be hereinafter described as the Company, filed a preliminary written statement raising preliminary objections and prayed therein that if the preliminary objections are over-ruled they would file written statement on merits. On this, the workmen filed their rejoinder before this Tribunal. The case was taken up on 2nd December, 1966, for hearing on preliminary objections and on behalf of the company written arguments were filed, a copy of which was given to the workmen's representative to file similarly written arguments, if desired, which they have not done. Their arguments, however, had been heard at length. Since the preliminary objection prevails, it has become unnecessary to call upon the Company to file written statement on merits and to go into the controversy on facts.

The Company has a number of cement works and some collieries including the Kotma and Nowrozabad collieries. They have been paying bonus on a central accounting basis of all their units but after the passing of the Coal Mines Provident Fund and Bonus Scheme Act 1948 and the Bonus Scheme framed thereunder, no bonus is being paid to the workmen of the collieries except those who are getting more than Rs. 300 P.M. as wages. This is because under the Coal Mines Bonus Scheme workers who get wages less than Rs. 300 are entitled to bonus under the said Scheme. The workmen represented by the Kotma Colliery Mazdoor Sangh and the Nowrozabad Colliery Mazdoor Sangh raised the dispute for the first time on 19th February, 1961, that the workers were entitled to Profit Sharing Bonus apart from the Bonus Scheme of 1948. During the conciliation the Company took up the stand that no bonus was admissible because the workers were being paid bonus under the Coal Mines Provident Fund and Bonus Scheme Act 1948, to be hereinafter described as Coal Mines Bonus Scheme. The conciliation having failed, the Union pressed the Government for reference but the Government intimated that since the Bonus Commission was already seized with the matter no reference was expedient. After the report of the Bonus Commission and the Ordinance followed by the Bonus Act, the Union pressed the demand for a reference and which in due course has resulted in this reference. Although the demand was for the year 1959-60 the stand of the Union is that it was a continuing demand for subsequent years also whereas the position taken up by the Company is that there had been no fresh demand by the Union for the years under reference. The point, however, is immaterial since in my opinion the workmen are not entitled to bonus prior to the enactment of the Bonus Act. For the same reason another preliminary objection raised by the Company that the demand is belated need not be gone into.

Before going into the question whether the Coal Mines Bonus Act and Scheme would deprive the workmen for a claim of Profit Bonus it would be necessary to examine the nature of the bonus guaranteed by the said Scheme to workers of collieries. It has to be seen if this is an attendance bonus or includes all types of claim or bonus including a claim for profit bonus. To determine this, it would be necessary to go into the historical retrospect how the Coal Mines Bonus Scheme and Act came to be enacted and what are its salient features.

The Government of India, by their Notification dated 5th February, 1947, constituted a Board of Conciliation (for Bengal and Bihar) under the Trade Disputes Act 1929 (An Act which preceded the Industrial Disputes Act 1947) for promoting settlement of disputes in Coal fields. The Conciliation Board submitted its report dated 12th April 1947. The Government of India *vide* Resolution dated 12th May, 1947, accepted the recommendations of the Board. Several demands were put forward by the Workers' Unions before the Conciliation Board and they were as many as thirty-three demands. Demand No. 4 out of the said demands was for "Profit sharing Bonus." With reference to profit sharing bonus, a claim was made by the workmen for four months' pay as bonus and the basis of the demand was that four months' bonus was being granted to colliery workers of the Tata Iron and Steel Co., Ltd., and should also be enjoyed by the workers employed in other coal mines. After considering the demand for Profit Bonus, the Conciliation Board in their report observed as under:—

"We feel that four months' "basic" pay as bonus should be granted, bringing the rest of the industry into line with the Tata Iron & Steel Company's collieries, but that this should be split into two months of calculation, the second of which, we believe, will provide still further incentive to increased production.

(a) Two months' basic earnings as bonus, dependent on attendance. In the case of a miner or other underground piece worker, he shall qualify by completing not less than 190 days attendance per annum. In the case of a weekly or monthly paid employee or surface piece worker, he shall qualify by completing 265 days attendance per annum. This may be known as "Attendance Bonus".

(b) A figure of cost per ton has been determined for two months basic earnings calculated from Tata's figures of numbers qualifying, and their earnings, and relating this back to raisings during the given period.

It is intended that this figure of Rs. . . (to be calculated by the Industry) per ton of coal raised, shall be set aside and at the end of the year shall be shared out amongst those qualifying by attendance, and according to their basic earnings qualifying periods as in (a). The advantages of this proposal are that the greater the output the greater the shareout, and provides the incentive for every worker to give his best and so reduce the numbers required with a resultant higher O.M.S. This may be named "Production Bonus".

The only further qualification concerning both attendance and production bonus is that the beneficiary shall not have taken part in an illegal strike during the qualifying period.

We recommend that any dispute concerning bonus shall be settled at the instance of the Conciliation Officer or a Senior Officer of the Department of Mines sitting with the two parties concerned. At the same time we anticipate that the Industry and the workers will co-operate to make the scheme an unqualified success."

In order to implement the recommendations of the Conciliation Board, an Ordinance styled as "The Coal Mines Provident Fund and Bonus Scheme Ordinance 1948" was promulgated on 23rd April, 1948 and the Coal Mines Bonus Scheme was framed thereunder. The Ordinance ceased to have effect on expiry of six months (on 23rd October, 1948). The Scheme which was framed under the Ordinance was of a permanent nature and the Parliament, therefore, enacted the Coal Mines Provident Fund and Bonus Schemes Act 1948 (Act 46 of 1948) and the Coal Mines Bonus Scheme framed under the Ordinance continued under the Act. The statement of objects and reasons to the said enactment reads as under:—

"The Board of Conciliation appointed in 1947 in connection with certain disputes in the Bengal and Bihar Coal Fields recommended the payment of bonus to and the establishment of Provident Fund for the employees in Coal Mines. With a view to implementing these recommendations, the Government promulgated the Coal Mines Provident Fund and Bonus Schemes Ordinance 1948" on 23rd April 1948. A Coal Mines Bonus Scheme has since been framed under that Ordinance and the details of Provident Fund Scheme are being worked out."

"As the life of an Ordinance is six months, the Ordinance will cease to be effective on the 23rd October, 1948. As the Schemes which are being framed under it must be continued beyond that date, this Bill

seeks to replace the Ordinance by an Act." (Gazette of India 1948 Part V, p.807).

From the above historical background it is clear that the Coal Mines Bonus Scheme has its roots in the recommendations of the Conciliation Board which were again consequent upon a demand for four months' profit bonus made by the Coal Mine Workers on the analogy of such profit bonus being paid year to year by the Collieries of Tata Iron & Steel Company Ltd.

The salient features of the Coal Mines Bonus Scheme and the Bonus paid thereunder are as under:—

Employees whose basic earnings do not exceed Rs. 300/- per month are admissible to bonus under the Scheme. An employee of category I should put in attendance of not less than 60 days in a quarter and an employee of category II must put in attendance of not less than 65 days in a quarter in order to be entitled to bonus under the Scheme.

The amount of bonus shall be 1/3rd of the basic earnings of the employees for work done during the quarter for which he qualifies for bonus.

Participation in illegal strike dis-entitles a workman to Bonus under the Scheme if such strike is declared illegal by the Regional Labour Commissioner.

Bonus is payable within two months of the ending of the quarter and un-claimed bonus is to be credited to "Reserve Account."

It is to be noticed from the provisions of the Coal Mines Bonus Scheme that the Bonus envisaged by the Scheme is standardisation of all kinds of bonus so far as the coal mine workers are concerned and it is not any special kind of bonus like Attendance Bonus and/or Production Bonus.

Furthermore, the Act defines Bonus under Section 2(a) as meaning "Any sum of money payable to an employee under Coal Mines Bonus Scheme framed under the Act". It is significant that Bonus is defined in such wide terminology by Section 2(a) of the Act, evidently because the Parliament intended to embrace within the bonus payable under the Scheme all kinds of bonus and to avoid any industrial dispute being raised as to Attendance Bonus, Production Bonus or Profit Bonus under the provisions of the Industrial Disputes Act. Being a controlled industry, the variation in profits between one colliery and another was not expected to be much and it was therefore possible to standardise bonus which was to be paid in addition to wages and being a controlled industry over which the country is vitally interested, the Parliament also wanted industrial peace by avoiding disputes as to bonus year to year in one colliery or the other. It was with this intention and object in view that the Coal Mines Bonus Scheme was framed and bonus was directed to be paid equivalent to 25% of the basic earnings in lieu of all kinds of bonus which can be demanded by way of industrial disputes being raised by the workmen and it is therefore that no nomenclature to either Attendance Bonus or Production Bonus or Profit Bonus was given to bonus payable under the Coal Mines Bonus Scheme. The bonus which is paid under the Scheme also does not partake the character of any special type of bonus, the condition as to attendance which is imposed by the Scheme is to encourage attendance and thereby enable the collieries to earn reasonable profits so that bonus can be paid. But such condition having been incorporated in the Scheme does not characterise the bonus payable under the scheme as "Attendance Bonus". It may be noted that even where the Industrial Tribunal or Labour Appellate Tribunal was granting Profit Bonus in the past, it was usual with them to impose a condition as to certain attendance on the part of a workman before he becomes eligible to bonus awarded by the Tribunal as Profit Bonus. Thus, condition as to attendance is a condition as to the eligibility for bonus under the Scheme and by such condition as to eligibility it does not become "Attendance Bonus" as distinguished from any other kind of bonus.

It is manifest that bonus paid under the Scheme is an addition to the wage which the coal mine worker is entitled to and it embraces within its scope all kinds of bonus, be it profit bonus, attendance bonus or production bonus and it standardises bonus in the sense of an addition to wage being paid by the collieries to their workmen statutorily so as to avoid and obviate industrial disputes being raised for claiming bonus at the end of every year against each and every Colliery.

The bonus payable to the workers of coal mines under the Coal Mines Bonus Act and Scheme is not only an Attendance Bonus but includes the claim for a Profit Bonus also and has always been treated to be so even by the workers of the collieries is further evident by the fact that throughout all these years no Union or a Federation of coal mines workers had ever claimed Profit Bonus. It was for the first time that the Union raised this claim in 1961. The dispute is first of its kind raised by the Unions of these collieries. It may be noticed that in respect of years 1956-57 to 1958-59 there was a reference to National Tribunal for the payment of bonus to be paid to the employees of this Company both at headquarters, branches and works including quarries. The award of the National Tribunal presided by Sri Salim Merchant in Ref. No. 1 of 1961 delivered on 5th November, 1964 shows that no claim was made by any union for bonus to the workers of the collieries. The Unions of these collieries did not apply before the said Tribunal to be made parties and failed to contend that they were also entitled to bonus.

There is yet another circumstance to show that the Unions and Federation of Workers of the collieries had never conceived a claim of Profit Bonus in the past and had all along been treating bonus payable under the Coal Mines Act and Scheme as inclusive of the profit bonus. The Central Wage Board for the coal mines industry issued a questionnaire both to the workmen as well as to the employers and question no. 40 of the said questionnaire reads as under:—

“Do you have any system of paying profit-sharing bonus in your unit or units? If so, please give details?”

In answer to this question, the Employers' Organisations consisting of the Indian Mining Association, The Indian Mining Federation, The Indian Colliery Owners' Association and M.P. and Vidharbha Mining Association through a Joint Committee replied as under:

“The practice of paying profit sharing bonus in addition to the existing bonus has not been adopted in the Coal Mining Industry for numerous reasons which have been explained to the Bonus Commission.”

The Indian National Mine Workers' Federation, to which the Kotma Colliery Mazdoor Sangh and the Nowrozabad Colliery Mazdoor Sangh are affiliated, replied to the said Question No. 40 as under:—

“Profit sharing bonus has been denied to the workmen in the Coal Mining Industry though the industry is prosperous and there are companies which pay dividend as high as 95%.”

The answer to the Questionnaire both by the Unions and the employers, more particularly by the Indian National Mine Workers' Federation, shows beyond doubt that in no colliery so far before it came to be covered by the Payment of Bonus Act, 1965 profit bonus has been paid in addition to bonus under the Coal Mines Bonus Scheme.

The claim for Production Bonus has been conceived obviously because of some observations made by the Bonus Commission in paragraph 14.2 at page 69. The coal industry contended that the industry had already been paying Profit Bonus under the Coal Mines Bonus Scheme and Act and they should not be saddled further with statutory bonus under the Bonus Act. The contention was rejected. The Commission observed as follows:—

“It might also transpire that in the case of this industry which has never paid profit bonus, the payment of a minimum bonus may necessitate some, though not appreciable, increase in the price of coal.”

The above observation would show that the Commission was not concerned so much with the nature of the bonus which has been paid under the Coal Mines Bonus Act and Scheme than with the question whether the imposition should or should not be made applicable to this industry also. The prime consideration with the Commission was that even though it may entail a little increase in the cost the workers in this industry should also participate and be entitled to the statutory bonus. Consequently, just because the management of the collieries have to pay a further statutory bonus under the Bonus Act in addition to the bonus payable under the Coal Mines Provident Fund and Bonus Act and Scheme thereunder is no ground to suppose that the bonus which had been paid in the past under the Coal Mines Bonus Act and Scheme did not include profit bonus. The years in question are not covered by the Bonus Act and Section 33 of the said Act has already been struck down by the Hon'ble Supreme Court. That being so, without going into the other objections of the Company that there had been no demand for bonus for the years 1961-62 onwards and that the claim for all these years is a belated need no further enquiry.

The result is that profit sharing bonus is not payable to the workers of these collieries because they had been receiving bonus under the Coal Mines Provident Fund and Bonus Act and Scheme thereunder. The reference is answered accordingly. No order is made for costs.

(Sd.) G. C. AGARWALA,
Presiding Officer.
[No. 5/3/66-LRU.]

K. I VIDYASAGAR, Jt. Secy.